



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised May 2018

1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number
g. Agency Liaison Email Address		
h. Date of Public Notice		i. Comment Period End Date
j. Public Comment URL or Email Address:		
k. Program		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Chapter Numbers and Years Enacted
(eg: 2015 Session Laws Chapter 154):

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

Not Applicable.

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

24/7 Sobriety Program

Statement of Principal Reasons

The Attorney General, under authority granted by Wyoming Statute § 7-13-1705(a), seeks to amend rules to continue to implement the 24/7 Sobriety Program created by Wyoming Statutes § 7-13-1701 through -1711. Specifically, the statute requires the Attorney General to implement rules to:

“(i) Provide for the nature and manner of testing and the procedures and apparatuses to be used for testing; (ii) Establish fees and provide for the collection of fees. The fees shall be set as low as possible, but shall be set so that the total of fees and other funds credited to the program account defray the entire expense of the program, including all costs to the state[.]”

Wyo. Stat. Ann. § 7-13-1705(a).

To continue to fulfill that mandate, the amended rules will expand the drug and alcohol testing options for the Program’s participants. At present, drug testing is limited to urine testing and drug patch testing, while alcohol testing is limited to twice daily breath testing. The proposed amendments add saliva testing as an additional drug testing option, and add continuous remote transdermal alcohol monitoring as an additional alcohol testing option. The proposed amendments set fees for the new testing options, and also modify existing testing fees. Finally, the amendments provide for the allocation of participant enrollment fees.

Chapter 1
Rulemaking Authority and Definitions

Section 1. Authority.

These rules are promulgated by the authority of Wyoming Statute § 7-13-1705.

Section 2. Definitions

(a) As used in these rules:

(i) “Drug patch” means any type of device that is affixed to a person’s skin that tests for the presence of a controlled substance, as defined in Wyoming Statute § 35-7-1002(a)(iv), in the participant’s body;

(ii) “Participant” means a person who has been ordered by a court or directed by the Board of Parole to participate in the 24/7 Sobriety Program;

(iii) “Participating entity” means a county sheriff’s office or a designated entity named by a sheriff that has agreed to participate in the 24/7 Sobriety Program by enrolling participants, administering one or more of the tests, or submitting reports to the Attorney General;

(iv) “Participating vendor” means the party that will provide the system that will be used to administer the 24/7 Sobriety Program and that will compile the necessary reports;

(v) “Participation agreement” means a written document prepared in a form approved by the Attorney General that contains the following:

(A) A statement, signed by the participant, saying that the participant agrees to participate in the 24/7 Sobriety Program;

(B) The type, frequency, and time period of testing;

(C) The testing site location;

(D) The fees and payment procedures required for testing; and

(E) The responsibilities and obligations of the participant under the 24/7 Sobriety Program.

Chapter 1
Rulemaking Authority and Definitions

Section 1. Authority.

These rules are promulgated by the authority of Wyoming Statute § 7-13-1705.

Section 2. Definitions.

(a) As used in these rules:

(i) “Continuous remote transdermal alcohol monitoring device” means any electronic instrument that is attached to a person and is capable of determining and monitoring the presence of alcohol in a person’s body. The term includes any associated equipment a participant needs for the device to perform properly;

(ii) “Drug patch” means any type of device that is affixed to a person’s skin that tests for the presence of a controlled substance, as defined in Wyoming Statute § 35-7-1002(a)(iv), in the participant’s body;

(iii) “Participant” means a person who has been ordered by a court or directed by the Board of Parole to participate in the 24/7 Sobriety Program;

(~~iii~~iv) “Participating entity” means a county sheriff’s office or a designated entity named by a sheriff that has agreed to participate in the 24/7 Sobriety Program by enrolling participants, administering one or more of the tests, or submitting reports to the Attorney General;

(iv) “Participating vendor” means the party that will provide the system that will be used to administer the 24/7 Sobriety Program and that will compile the necessary reports;

(v) “Participation agreement” means a written document prepared in a form approved by the Attorney General that contains the following:

(A) A statement, signed by the participant, saying that the participant agrees to participate in the 24/7 Sobriety Program;

(B) The type, frequency, and time period of testing;

(C) The testing site location;

(D) The fees and payment procedures required for testing; and

(E) The responsibilities and obligations of the participant under the 24/7 Sobriety Program.

Chapter 2 Enrollment, Testing and Fees

Section 1. Enrollment.

(a) A participating entity shall be provided with a copy of the order from a court or directive from the Board of Parole before enrolling a participant.

(b) A participant placed on the 24/7 Sobriety Program shall be enrolled by a representative of a participating entity as provided in the order or directive.

(c) The participating entity shall enter the participant's information into the reporting system provided by the participating vendor.

(d) The participant shall execute a participation agreement and provide written waivers to the participating entity to allow the release of program information for enforcement and reporting purposes. If the participant refuses to execute the agreement in full, the participant shall be denied participation in the program.

(e) The participating entity shall also provide the participant with information regarding any test ordered or directed, the applicable procedures, and the applicable fees.

(f) The participating entity shall not enroll a person in the 24/7 Sobriety Program if any fees were waived without the consent of the Attorney General.

Section 2. Types of testing authorized to detect the presence of alcohol.

(a) A participant who has been ordered or directed to submit to alcohol testing shall do so through twice-daily breath tests on a device designed to detect the presence of alcohol in the test subject's breath.

(i) The device need not comply with the Wyoming Department of Health's Rules and Regulations for Chemical Analysis for Alcohol Testing.

(ii) A participant who has been ordered to provide twice-daily breath tests shall report to the participating entity's testing location at the times determined by the participating entity, and not less than ten (10) hours and not more than fourteen (14) hours between each test.

Section 3. Types of testing authorized to detect the presence of a controlled substance.

(a) Except as provided in (b) of this section, a participant ordered to submit to drug testing shall do so through urine testing. The frequency of the urine testing shall be determined by the court or Board of Parole.

(b) As an alternative to (a) of this section, a participant may be ordered to use a drug patch designed to monitor the presence of a controlled substance. The use of this alternative is

solely within the discretion of the court or Board of Parole. Factors to be considered in determining whether to use this device include whether:

- (i) a patch is available;
- (ii) the participant is capable of paying the fees and costs associated with the drug patch;
- (iii) the participant is capable of wearing the drug patch; and
- (iv) the participant does not qualify for urine testing because of one or more of the following:

(A) the participant lives in a rural area and submitting to urine testing would be unduly burdensome;

(B) the participant's employment requires job performance at a location remote from the testing location and submitting to urine testing would be unduly burdensome; or

(C) the participant has violated the 24/7 Sobriety Program while submitting to urine testing and poses a substantial risk of future violation.

Section 4. Testing procedures.

- (a) A participating entity shall post hours of operation at the testing location.
- (b) Prior to each test administered, the participating entity shall verify the participant's identity.
- (c) The participating entity shall maintain a daily sign in record and each participant shall print and sign their names prior to submitting to testing.
- (d) The participant shall pay the required testing fee prior to submitting to testing.
- (e) A participating entity shall contemporaneously record all participant testing results using the reporting and data management system provided by the participating vendor.
- (f) If a test indicates the presence of alcohol or a controlled substance, or if the participant fails to appear for testing, the participating entity shall immediately notify law enforcement.

Section 5. Testing fees.

- (a) A participant submitting to twice-a-day breath testing shall pay a fee of two dollars (\$2) for each test.

(b) A participant submitting to urine testing shall pay a fee of ten dollars (\$10) for each test.

(c) A participant submitting to the use of a drug patch shall pay a fee of forty dollars (\$40) for each drug patch provided.

Section 6. Enrollment fees.

The participant shall pay a fee of thirty dollars (\$30) each time the participant is enrolled in the 24/7 Sobriety Program.

Section 7. Collection, distribution, and use of fees.

(a) A participant shall pay all fees directly to the participating entity.

(b) All fees are non-refundable.

(c) A participating entity shall remit all fees on the first of each month to the State Treasurer, through the Attorney General, to be credited to the 24/7 Sobriety Program account.

(d) Upon request by the Attorney General, the State Auditor shall distribute one dollar (\$1) from the testing fees to a participating vendor.

(e) After paying the participating vendors, the remainder of the testing fee proceeds shall be divided in the following manner:

(i) Seventy-five percent (75%) shall be returned to the participating entity;

(ii) Twenty-five percent (25%) shall be retained by the State Treasurer in the 24/7 Sobriety Program account.

(f) All fee proceeds shall be used only for the purposes of administering the 24/7 Sobriety Program.

Chapter 2 Enrollment, Testing and Fees

Section 1. Enrollment.

- (a) A participating entity shall be provided with a copy of the order from a court or directive from the Board of Parole before enrolling a participant.
- (b) A participant placed on the 24/7 Sobriety Program shall be enrolled by a representative of a participating entity as provided in the order or directive.
- (c) The participating entity shall enter the participant's information into the reporting system provided by the participating vendor.
- (d) The participant shall execute a participation agreement and provide written waivers to the participating entity to allow the release of program information for enforcement and reporting purposes. If the participant refuses to execute the agreement in full, the participant shall be denied participation in the program.
- (e) The participating entity shall also provide the participant with information regarding any test ordered or directed, the applicable procedures, and the applicable fees.
- (f) The participating entity shall not enroll a person in the 24/7 Sobriety Program if any fees were waived without the consent of the Attorney General.

Section 2. Types of testing authorized to detect the presence of alcohol.

- (a) A participant who has been ordered or directed to submit to alcohol testing shall do so through twice-daily breath tests on a device designed to detect the presence of alcohol in the test subject's breath.
 - (i) The device need not comply with the Wyoming Department of Health's Rules and Regulations for Chemical Analysis for Alcohol Testing.
 - (ii) A participant who has been ordered to provide twice-daily breath tests shall report to the participating entity's testing location at the times determined by the participating entity, and not less than ten (10) hours and not more than fourteen (14) hours between each test.
- (b) As an alternative to (a) of this section, a participant may be ordered to submit to monitoring on a continuous remote transdermal alcohol monitoring device. This decision is solely within the discretion of the court or the Board of Parole. Factors to be considered in determining whether to use this device include whether:
 - (i) a device is available;
 - (ii) the participant is capable of paying the fees and costs associated with continuous remote transdermal alcohol monitoring;

(iii) the participant is capable of wearing the device; and

(iv) the participant does not qualify for twice-daily breath tests because of one or more of the following:

(A) the participant lives in a rural area and submitting to twice-daily breath tests would be unduly burdensome;

(B) the participant's employment requires job performance at a location remote from the testing location and submitting to twice-daily breath tests would be unduly burdensome; or

(C) the participant has violated the 24/7 Sobriety Program while submitting to twice-daily breath tests and poses a substantial risk of future violation.

Section 3. Types of testing authorized to detect the presence of a controlled substance.

(a) Except as provided in (b) of this section, a participant ordered to submit to drug testing shall do so through urine or saliva testing. The frequency of the urine or saliva testing shall be determined by the court or Board of Parole.

(b) As an alternative to (a) of this section, a participant may be ordered to use a drug patch designed to monitor the presence of a controlled substance. The use of this alternative is solely within the discretion of the court or Board of Parole. Factors to be considered in determining whether to use this device include whether:

(i) a patch is available;

(ii) the participant is capable of paying the fees and costs associated with the drug patch;

(iii) the participant is capable of wearing the drug patch; and

(iv) the participant does not qualify for urine or saliva testing because of one or more of the following:

(A) the participant lives in a rural area and submitting to urine or saliva testing would be unduly burdensome;

(B) the participant's employment requires job performance at a location remote from the testing location and submitting to urine or saliva testing would be unduly burdensome; or

(C) the participant has violated the 24/7 Sobriety Program while submitting to urine or saliva testing and poses a substantial risk of future violation.

Section 4. Testing procedures.

- (a) A participating entity shall post hours of operation at the testing location.
- (b) Prior to each test administered, the participating entity shall verify the participant's identity.
- (c) The participating entity shall maintain a daily sign in record and each participant shall print and sign their names prior to submitting to testing.
- (d) The participant shall pay the required testing fee prior to submitting to testing.
- (e) A participating entity shall contemporaneously record all participant testing results using the reporting and data management system provided by the participating vendor.
- (f) If a test indicates the presence of alcohol or a controlled substance, or if the participant fails to appear for testing, the participating entity shall immediately notify law enforcement.

Section 5. Testing fees.

- (a) A participant submitting to twice-a-day breath testing shall pay a fee of two dollars (\$2) for each test.
- (b) A participant submitting to urine testing shall pay a fee of ten dollars (\$10) for each test.
- (c) A participant submitting to the use of a drug patch shall pay a fee of forty-five dollars (~~\$450~~) for each drug patch provided.
- (d) A participant submitting to saliva testing shall pay a fee of ten dollars (\$10) for each test.
- (e) A participant submitting to continuous remote transdermal alcohol monitoring shall pay a daily fee of ten dollars (\$10).

Section 6. Enrollment fees.

- (a) The participant shall pay a fee of thirty dollars (\$30) each time the participant is enrolled in the 24/7 Sobriety Program.
- (b) A participant submitting to continuous remote transdermal alcohol monitoring shall, in addition to the enrollment fee, pay the cost of the installation and removal of the device in accordance with the vendor agreements. The total cost of the installation and removal of the device shall not exceed one hundred dollars (\$100) and shall be due upon enrollment.

Section 7. Collection, distribution, and use of fees.

- (a) A participant shall pay all fees directly to the participating entity.
- (b) All fees are non-refundable.
- (c) A participating entity shall remit all fees on the first of each month to the State Treasurer, through the Attorney General, to be credited to the 24/7 Sobriety Program account.
- (d) Upon request by the Attorney General, the State Auditor shall distribute ~~one dollar (\$1) from the testing fees to a participating vendor~~ a portion of the testing fees to the participating vendors in accordance with the vendor agreements.
- (e) After paying the participating vendors, the remainder of the testing and enrollment fee proceeds shall be divided in the following manner:
 - (i) Seventy-five percent (75%) shall be returned to the participating entity;
 - (ii) Twenty-five percent (25%) shall be retained by the State Treasurer in the 24/7 Sobriety Program account.
- (f) All fee proceeds shall be used only for the purposes of administering the 24/7 Sobriety Program.